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International trade in goods — tax issues

The World Customs Organization Guide to Customs Valuation and Transfer Pricing

Note by the Secretariat

1. A relevant publication for this agenda item is the World Customs Organization (WCO) Guide to Customs Valuation and Transfer Pricing (2015).[1] The document was drawn up with the participation of the Organization for Economic Cooperation and Development (OECD), the World Bank and the International Chamber of Commerce.

2. WCO has noted that the interaction between customs and transfer pricing regimes has been an important issue over recent years:[2]

> The issue concerns international transactions within a multi-national group. Customs' aim is to ensure that the price for transactions of imported goods is not influenced by the relationship between buyer and seller (based on the methodology for Customs valuation contained in the WTO Valuation Agreement). Tax administrations, on the other hand, are examining the same transactions to ensure the conditions are consistent with the "arm's length principle" for profit tax purposes. Generally, the methodology used for this purpose is based on the OECD Transfer Pricing Guidelines.[2]

3. The WCO Guide explains that:[1]

> For Customs valuation purposes, import transactions between two distinct and legally separate entities of the same MNE group are treated as "related party

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[1] World Customs Organization, *WCO Guide to Customs Valuation and Transfer Pricing*, ("WCO Guide") (2015); available at: http://www.wcoomd.org/en/topics/key-issues/revenue-package/~/media/36DE1A4DC54B47109514FFCD0AAE6B0A.ashx.

[2] World Customs Organization, "New WCO Guide to Customs Valuation and Transfer Pricing" (2015), available from http://www.wcoomd.org/en/media/newsroom/2015/june/new-wco-guide-to-customs-valuation-and-transfer-pricing.aspx.

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> transactions". Such transactions may be examined by Customs to determine whether the price declared for the imported goods is "influenced" by the relationship. In other words, is the price at which the goods have been sold at a lower level than it would have been had the parties not been related and the price had been freely negotiated?
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> The methodology for determining the Customs value for imported goods subject to ad valorem duty rates is set out in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 ("the Agreement"). All WTO Member countries have an obligation to implement the Agreement and apply this methodology. Some non-WTO Members also choose to adopt it, hence it applies to the vast majority of all international trade.[1]

4. The WCO Guide then contrasts this with transfer pricing in the revenue sphere and the way in which the arm's length principle is applied in practice. It noted that the relationship between customs valuation and transfer pricing has been discussed in various national and international forums over the past few years and that the business community has raised the issue as a matter of concern, in particular advocating that customs administrations take into account available transfer pricing information prepared for direct tax purposes when examining related party transactions and also give consideration to the impact of transfer pricing adjustments on the customs value.[1]

5. The WCO Guide notes that:

> [A]t this stage any alignment or merger of tax and Customs methodologies is not a realistic proposition given the particulars of the existing legal frameworks upon which they are based. The essence of the issue therefore is contained in the following question: to what extent can information contained in transfer pricing documentation, primarily developed for taxation purposes, provide useful information for Customs to determine whether or not the price declared for imported goods has been influenced by the parties' relationship, in order to make a final determination of the Customs value?
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> The Technical Committee on Customs Valuation has confirmed the basic principle that transfer pricing documentation may provide useful information for Customs in respect of related party transactions, on a case by case basis. The focus is now on providing further guidance to Customs on how to examine and interpret transfer pricing documentation which may be helpful in this regard. The other key question is the impact of adjustments made (after importation) for transfer pricing purposes; in which cases, if any, should such adjustments be taken into account by Customs in determining the Customs value of the imported goods?[1]

6. The Guide recognizes the importance of encouraging customs and tax administrations to establish bilateral lines of communication in order to exchange knowledge, skills and data, where possible, to help ensure that each authority has the broadest picture of a multinational enterprise group's business, as well as its compliance record, and can make informed decisions on the correct revenue liability. WCO is working with relevant tax organizations to that end.[2]

7. WCO has identified as a key message that: "Customs and tax authorities are encouraged to work together and exchange information and knowledge in this area. Similarly, businesses are encouraged to take into account Customs' needs when preparing documentation such as transfer pricing studies and Advance Pricing Agreements."[2]